

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. NOE ALFREDO NAVARRO-MORALES, Defendant.	4:18-CR-40099-KES ORDER ADOPTING REPORT AND RECOMMENDATION AS MODIFIED AND DENYING MOTION TO SUPPRESS
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Defendant, Noe Alfredo Navarro-Morales, is charged with illegal reentry after deportation in violation of 8 U.S.C. § 1326(a). Docket 1. Defendant filed a motion to suppress “the fruits of his invalid traffic stop, including his fingerprints and statements.” Docket 27. The court referred defendant’s motion to Magistrate Judge Veronica Duffy under 28 U.S.C. § 636(b)(1)(B). After holding an evidentiary hearing, Magistrate Judge Duffy recommended defendant’s motion to suppress be denied. Docket 35. Defendant filed objections to the Report and Recommendation. Docket 40. After a de novo review of the Report and Recommendation and a review of the record, the court adopts the Report and Recommendation as modified below and denies defendant’s motion.

LEGAL STANDARD

This court’s review of a magistrate judge’s report and recommendation is governed by 28 U.S.C. § 636 and Rule 72 of the Federal Rules of Civil

Procedure. The court reviews de novo any objections to the magistrate judge's recommendations with respect to dispositive matters that are timely made and specific. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Because motions to suppress evidence are considered dispositive matters, a magistrate judge's recommendation regarding such a motion is subject to de novo review.

28 U.S.C. § 636(b)(1)(A); *see also United States v. Raddatz*, 447 U.S. 667, 673 (1980). In conducting a de novo review, this court may then "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also United States v. Craft*, 30 F.3d 1044, 1045 (8th Cir. 1994).

FACTS

Navarro-Morales has objected to some of Magistrate Judge Duffy's factual findings. *See* Docket 40. A full recitation of the facts can be found in the Report and Recommendation (Docket 35), but after a de novo review of the evidence, the court finds the pertinent facts relevant to defendant's objections are as follows:

Around 1:00 a.m. on July 8, 2018, Officer Jason Meyer, a Sioux Falls Police officer, was on traffic patrol in a marked patrol vehicle. Docket 36 at 5:8-15; 9:1-2. As he traveled south on Cliff Avenue, Officer Meyer observed a white Ford F-250 pickup truck, driven by Navarro-Morales. *Id.* at 8:14; 9:4-9. Officer Meyer observed Navarro-Morales approach the intersection and nearly stop at a flashing yellow light before turning right and eastbound onto Rice Street. *Id.* at 9:8-9; 10:4. Officer Meyer then observed Navarro-Morales negotiate the right-

hand turn and pull farther to the right than required, causing the passenger-side tires of Navarro-Morales's vehicle to cross what Officer Meyer believed was the fog line demarking the right-most boundary of the right lane on Rice Street. *Id.* at 10:22-25.

Officer Meyer proceeded to turn left onto Rice Street and follow Navarro-Morales for some distance, specifically, "from Rice Street to approximately the railroad tracks near Lowell Avenue." *Id.* at 12:19-20. As Officer Meyer followed he observed Navarro-Morales's pickup truck drift from right to left and left to right. Officer Meyer observed Navarro-Morales "drifting in the lanes and making contact with the lane markers down Rice Street." *Id.* at 11:1-3. Officer Meyer observed the vehicle "drifting and [touching] the fog and center line" *Id.* at 11:12-13. As he continued to follow, Officer Meyer observed Navarro-Morales's vehicle make contact "once again, with the center line, just as [Officer Meyer] was activating [his] emergency lights." *Id.* at 23:25-24:1.

Based on Navarro-Morales stopping at a flashing yellow light, making contact with the fog line as he turned onto Rice Street, and drifting down Rice Street making contact at different times with lane markers, Officer Meyer believed he had reasonable suspicion that Navarro-Morales was driving under the influence. See Docket 36 at 53:3-9 (stating, "[b]asically I had reasonable suspicion to believe that the driver was impaired, after seeing him driving on the roadway."). Officer Meyer then activated his patrol lights and siren, but Navarro-Morales did not slow or stop. *Id.* at 13:7-19; 24:17-20. After two more

siren activations, Navarro-Morales pulled into a vacant parking lot after turning right on Cleveland Avenue. *Id.* at 26:8-12.

Officer Meyer then approached Navarro-Morales and “could smell the odor of intoxicants” coming from Navarro-Morales. *Id.* at 27:24-25. At this point, Officer Meyer observed Navarro-Morales fumble with some money as he asked Navarro-Morales for his identification and insurance. *Id.* at 27:7-9; 28:7-20. After asking Navarro-Morales to come back to his patrol car, Officer Meyer administered the Horizontal Gaze Nystagmus test, which tested positive for signs of intoxication, and a preliminary breath test (PBT), which indicated an alcohol level of .132 percent, a percentage above the legal limit of .08 percent in South Dakota. *Id.* at 16:4-17:2. Following these tests, Officer Meyer placed Navarro-Morales under arrest for driving while impaired and transported him to the Minnehaha County jail. *Id.* at 17:4-13.

Once at the jail, Navarro-Morales refused to consent to a blood draw. *Id.* at 18:3-6. Officer Meyer then obtained a search warrant and blood was drawn. *Id.* at 17:23-18:2. Following this, Navarro-Morales was turned over to the jail staff for booking. *Id.* at 18:11-19. As part of the booking process, every individual arrested is booked into the jail with his or her photograph and fingerprints taken. *Id.* at 33:6-15. Staff at the Minnehaha County jail then enter those fingerprints into the Federal Bureau of Investigation (FBI) database and the National Crime Information Center (NCIC) database. *Id.* at 58:21-24; 65:10-14. Navarro-Morales was booked with his fingerprints taken. *Id.* at 18:11-15.

The following day, deportation agent Jason Von Haden, who works for Immigration and Customs Enforcement (ICE), received an email list of individuals booked in the jail. *Id.* at 57:11-58:4. Agent Von Haden testified that every morning he receives an emailed roster of each individual booked into the Minnehaha County jail with information such as their name, date of birth, address, where they were born, and their pending charge. *Id.* at 57:25-58:1; 68:12-17. After receiving the roster, Agent Von Haden testified that his procedure is to look for individuals who list foreign nations as their country of birth and conduct a subsequent search on these individuals in the ICE database. *Id.* at 68:12-22; 69:4-8. This search may then match a subject whose information is already in ICE records. *Id.* at 68:23-24. Agent Von Haden testified that on July 8, 2018, he received the Minnehaha County jail email, and following his typical procedures, reviewed the list and searched the names of individuals in the ICE database. *Id.* at 68:12-22; 69:4-7. Agent Von Haden testified that he started investigating Navarro-Morales based on this emailed jail booking sheet, and that he obtained information that someone named Noe Alfredo Navarro-Morales had previously been deported from the United States. *Id.* at 60:3-6; 68:23-24; 70:7-11.

On July 9, 2018, Agent Von Haden received an IAR email. *Id.* at 58:21-24. Agent Von Haden testified that this is a different process than the jail booking sheet he received the day prior. *Id.* at 68:25-69:7. An IAR email is generated when an individual's fingerprints match filed fingerprints in the ICE database. *Id.* at 63:5-6. Agent Von Haden testified that he cannot positively

identify an individual based on the booking sheet until after he gets an IAR fingerprint email or he fingerprints the individual at his office. *Id.* at 71:4-6. After receiving the IAR email stating that Navarro-Morales's fingerprints were a match, Agent Von Haden concluded Navarro-Morales illegally re-entered the United States after being deported. *Id.* at 60:1-2. On July 10, 2018, he took custody of Navarro-Morales, read him his *Miranda* rights, interviewed him, and fingerprinted him. *Id.* at 60:10-14; 67:22-25. These custodial steps were part of Agent Von Haden's normal ICE procedures. *Id.* at 60:20-61:2.

DISCUSSION

Navarro-Morales objects to Magistrate Judge Duffy's finding that Officer Meyer had reasonable suspicion to believe Navarro-Morales committed a traffic violation by crossing a lane line. Docket 40 at 1-4. Navarro-Morales also objects to Magistrate Judge Duffy's finding that Officer Meyer had reasonable suspicion to believe Navarro-Morales was driving under the influence. *Id.* at 4-6. Navarro-Morales also objects to Magistrate Judge Duffy's finding that neither set of Navarro-Morales's fingerprints are fruit of the poisonous tree and subject to the exclusionary rule. *Id.* at 7-9. Finally, Navarro-Morales objects to Magistrate Judge Duffy's finding that no statements from Navarro-Morales are fruit of the poisonous tree and subject to the exclusionary rule. *Id.* at 9-10. The court will address each legal objection in turn.

I. Traffic Stop

After a review of the evidence, Magistrate Judge Duffy concluded the traffic stop of Navarro-Morales was supported by reasonable suspicion and did

not violate the Fourth Amendment. Docket 35 at 16. The Eighth Circuit Court of Appeals has summarized the well-established law regarding traffic stops:

The Fourth Amendment prohibits unreasonable searches and seizures. A traffic stop constitutes a seizure of a vehicle's occupants, including any passengers. A traffic stop must be supported by reasonable suspicion or probable cause. A law enforcement officer has reasonable suspicion when the officer is aware of particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant suspicion that a crime is being committed. Any traffic violation, however minor, provides probable cause for a traffic stop. The determination of whether probable cause, or reasonable suspicion, existed is not to be made with the vision of hindsight, but instead by looking to what the officer reasonably knew at the time. Even an officer's incomplete initial observations may give reasonable suspicion for a traffic stop. Mistakes of law or fact, if objectively reasonable, may still justify a valid stop.

United States v. Hollins, 685 F.3d 703, 705-06 (8th Cir. 2012) (internal quotations and citations omitted). A traffic stop based on probable cause gives officers “considerably more leeway” than a traffic stop based on reasonable suspicion, which must be “justified at its inception and reasonably related in scope to the circumstances which justified the interference in the first place.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1621 (2015) (internal quotations and citation omitted).

Under the Fourth Amendment, probable cause “exists if the totality of facts based on reasonably trustworthy information would justify a prudent person in believing the individual arrested had committed . . . an offense at the time of the arrest.” *Stoner v. Watlington*, 735 F.3d 799, 803 (8th Cir. 2013) (citation omitted). There must be only a “probability or substantial chance of criminal activity, rather than an actual showing of criminal activity.” *United*

States v. Torres-Lona, 491 F.3d 750, 756 (8th Cir. 2007) (citation omitted). “An officer has probable cause to conduct a traffic stop when he observes even a minor traffic violation.” *United States v. Sallis*, 507 F.3d 646, 649 (8th Cir. 2007) (citations omitted).

A traffic stop based on reasonable suspicion is permitted when law enforcement has “ ‘a particularized and objective basis for suspecting the particular person stopped of criminal activity.’ ” *Navarette v. California*, 572 U.S. 393, 396-97 (2014) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). “While reasonable suspicion must be more than an inchoate hunch, the Fourth Amendment only requires that police articulate some minimal, objective justification” *United States v. Tamayo-Baez*, 820 F.3d 308, 312 (8th Cir. 2016) (internal quotation and citation omitted). The level of suspicion required for reasonable suspicion is less demanding than the level of suspicion required for probable cause. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

“When evaluating the validity of a traffic stop, [courts] consider ‘the totality of the circumstances—the whole picture.’ ” *Duffie v. City of Lincoln*, 834 F.3d 877, 883 (8th Cir. 2016) (quoting *Cortez*, 449 U.S. at 417). When determining under the totality of circumstances whether reasonable suspicion exists to initiate a traffic stop, officers may “draw on their own experience and specialized training” *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (citing *Cortez*, 449 U.S. at 418). If the officer has an objectively reasonable belief that the suspect has violated a traffic law, even if the officer is mistaken, reasonable suspicion for the stop can still exist. *United States v. Bueno*, 443

F.3d 1017, 1024-25 (8th Cir. 2006) (citations omitted); *see also United States v. Herrera-Gonzalez*, 474 F.3d 1105, 1109 (8th Cir. 2007) (noting that even if an officer is mistaken and a traffic violation did not occur, if the mistake was objectively reasonable it does not violate the Fourth Amendment). In addition, “ ‘factors that individually may be consistent with innocent behavior, when taken together, can give rise to reasonable suspicion, even though some persons exhibiting those factors will be innocent.’ ” *United States v. Bordeaux*, 2014 WL 6462006, at *5 (D.S.D. Nov. 17, 2014) (quoting *United States v. Stewart*, 631 F.3d 453, 457 (8th Cir. 2011)). If the investigatory stop of the vehicle is not supported by reasonable suspicion or probable cause, then any evidence derived from the stop must be excluded from trial. *Wong Sun v. United States*, 371 U.S. 471, 484 (1963).

A. Officer Meyer had reasonable suspicion to believe Navarro-Morales committed a traffic violation by crossing a fog or center line.

Magistrate Judge Duffy concluded that Officer Meyer had reasonable suspicion “to believe Mr. Navarro-Morales violated the practicable-lane statute.” Docket 35 at 14. Navarro-Morales objects to this conclusion. Docket 40 at 1. Navarro-Morales argues that his driving did not violate SDCL § 32-26-6 and cannot amount to reasonable suspicion. Docket 40 at 2. Upon review of Officer Meyer’s patrol car video and the record, the court agrees with the report and recommendation that Officer Meyer had an objectively reasonable basis to stop Navarro-Morales for violating South Dakota’s practicable-lane statute.

South Dakota’s practicable-lane statute reads:

On a roadway divided into lanes, a vehicle shall be driven as nearly as practicable entirely within a single lane and may not be moved from such lane until the driver has first ascertained that such movement can be made with safety. A violation of this section is a Class 2 misdemeanor.

SDCL § 32-26-6. In 2013, the South Dakota Supreme Court interpreted whether crossing over a fog line created reasonable suspicion to uphold a vehicle stop. *State v. Hett*, 834 N.W.2d 317, 319 (S.D. 2013). The court held that whether a violation of SDCL § 32-26-6 occurs requires focusing “on the reasonableness of an officer’s suspicion in light of the facts surrounding the stop as they reflect the practicability of maintaining a single lane of traffic.” *Id.* at 322 (citation omitted). The court considered multiple factors including (1) the length and duration of crossing the lane marker, (2) distance traveled outside the lane of traffic, (3) design of the highway, such as the existence of curves, (4) traffic conditions, and (5) road conditions. *Id.* After weighing these factors, the South Dakota Supreme Court concluded that the officer had reasonable suspicion that the defendant violated SDCL § 32-26-6 when the officer saw the defendant cross over a fog line “by at least a tire width” *Id.* at 323.

In 2007, the Eighth Circuit interpreted a similar practicable-lane statute from Iowa. *United States v. Herrera-Gonzalez*, 474 F.3d 1105 (8th Cir. 2007). In *Herrera-Gonzalez*, the district court granted the defendant’s motion to suppress, finding no objectively reasonable basis for the stop of the defendant’s vehicle after it crossed a fog line on the right side of the right lane. *Id.* at 1107- 09. The Eighth Circuit reversed. *Id.* at 1111. Considering factors similar

to those outlined in the *Hett* case, the Eighth Circuit noted the duration of the alleged violation (10-15 seconds), the time of day that the alleged violation occurred, and the absence of any adverse weather or road conditions. *Id.* at 1110-11. Based on these factors, the Eighth Circuit concluded that there was reasonable suspicion that the defendant had committed a traffic violation when the officer observed the vehicle cross the fog line. *Id.* at 1111.

A year later, this court interpreted the South Dakota practicable-lane statute. *See United States v. Carrasco-Ruiz*, 587 F. Supp. 2d 1089 (D.S.D. 2008). In *Carrasco-Ruiz*, the district court adopted the magistrate court's finding that crossing the fog and center lines were violations of SDCL § 32-26-6. *Id.* at 1099. And as recent as last year, this court found in *United States v. Spaid* that officers had at least a reasonable suspicion that the defendant violated SDCL § 32-26-6 based on the totality of the circumstances of the early morning traffic stop including the make of the road, the lack of obstructions, and the testimony of the officer, even though the defendant argued the video showed otherwise. 2017 WL 4863080, at *4 (D.S.D. Oct. 27, 2017).

Similar to *Herrera-Gonzalez*, *Carrasco-Ruiz*, and *Spaid*, the record supports Magistrate Judge Duffy's conclusion that there was an objectively reasonable belief that Navarro-Morales had committed a traffic violation by crossing the fog and center lines. Docket 35 at 14-16. Considering the factors set forth in *Hett*, Officer Meyer testified as to the first factor, length and duration of the violation, that at different times Navarro-Morales was "drifting in the lanes and making contact with the lane markers down Rice Street."

Docket 36 at 11:2-3. Officer Meyer stated that Navarro-Morales “drifted back to the left, drifted back to the right, and did make contact with the fog line once again,” and that “contact was made, once again, with the center line, just as I was activating my emergency lights.” *Id.* at 21:23-25; 23:25-24:1. Officer Meyer also testified about the second factor, the distance traveled outside the lane of traffic, noting that “rear-view mirrors on an F-250 [truck] stick out farther than a normal vehicle,” and as such Navarro-Morales traveled outside his lane of traffic to the point that he would have made contact with other vehicles had vehicles been traveling near him. *Id.* at 12:12-16. As to third factor, design of the highway, Officer Meyer followed Navarro-Morales for about a mile, “from Rice Street to approximately the railroad tracks near Lowell Avenue.” *Id.* at 12:19-20. The patrol car video shows a straight, well-lit city road from Rice Street up to the turn near the railroad tracks. Lastly, as to the fourth and fifth factors, traffic conditions and road conditions, Officer Meyer testified that the incident took place on July 8, 2018 at 1:00 am. *Id.* at 9:1-2. The patrol car video shows that there was no harsh weather, road conditions were dry, there was no traffic in the early morning hours, and there were no apparent obstructions or barriers in the lane of travel. These factors are sufficient to support a finding that Officer Meyer had an objectively reasonable suspicion that Navarro-Morales had violated SDCL § 32-26-6 and that it was practicable for Navarro-Morales to remain entirely within his lane.

Navarro-Morales also argues that “the dash camera video does not show a fog line nor Noe crossing any such non-existing fog line while making the

turn or immediately after,” which undermines Officer Meyer’s testimony. Docket 40 at 2. The court disagrees. The poor quality of the video and the distance between Navarro-Morales’s truck and Officer Meyer’s patrol car make it difficult to tell whether Navarro-Morales crossed over fog lines and center lines or if he was driving near them. Docket 34, Ex. A at 1:04:29-32. But the video does not establish that Navarro-Morales never crossed a fog or center line and does not justify disregarding Magistrate Judge Duffy’s credibility determination of the testimony of Officer Meyer. *See United States v. Walker*, 555 F.3d 716, 720 (8th Cir. 2009) (declining to reverse the court’s finding that an officer’s testimony was credible when the defendant claimed the patrol car video undermined the testimony of the officer). Rather, the video is consistent with Officer Meyer’s testimony at the evidentiary hearing. The video shows that on July 8, 2018 the road was dry, straight, and smooth, that the lines down Rice Street were clearly marked, and that there were no obstructions in the lane as Navarro-Morales drove. Docket 34, Ex. A. These factors show it was practicable for Navarro-Morales to stay within his lane and not drift. The video also shows multiple instances of drifting, weaving, and lane-line contact, and Navarro-Morales’s tires crossing and making contact with the center line down Rice Street. *See id.* at 1:04:30-38; 1:06:00-03.

As discussed above, if the officer has an objectively reasonable belief that the suspect has violated a traffic law, even if the officer is mistaken, reasonable suspicion for the stop can still exist. *Bueno*, 443 F.3d at 1024-25 (citations omitted). Even if Navarro-Morales did not cross a fog line while

making the initial turn on Rice Street, the area depicted on the dash camera video where Navarro-Morales's tires crossed is where—on most roadways—a fog line would be. Officer Meyer testified that “immediately upon the turn onto Rice Street, the vehicle did pull farther to the right than what was required, causing it to come into contact with the fog line.” Docket 36 at 10:22-25. And on cross-examination, Officer Meyer stated that “this view right here, to me, it appears as though that tire is over the line and I can see white marking.” Docket 36 at 45:18-22. Thus, even if Officer Meyer was wrong about a fog line at the corner of Cliff Avenue and Rice Street, his error was objectively reasonable.

Finally, although Navarro-Morales argues that there is no fog line at the turn on Rice Street, the testimony at the evidentiary hearing bears out the fact that Officer Meyer did not write a ticket for a violation of SDCL § 32-36-6 for just the turn at Rice Street, but for the multiple instances of touching or crossing the fog and center lines down the mile stretch of Rice Street. Officer Meyer stated that Navarro-Morales “drifted back to the left, drifted back to the right, and did make contact with the fog line once again,” and that “contact was made, once again, with the center line, just as I was activating my emergency lights.” *Id.* at 21:23-25; 23:25-24:1. After being asked about “the drifting and contact with the fog and center line,” Officer Meyer testified that Navarro-Morales had drifted not only onto fog lines on Rice Street, but also over the center lines, and that he believed these various contacts violated SDCL § 32-36-6. *Id.* at 19:8-4. As Magistrate Judge Duffy noted in the Report and Recommendation, if the initial turn onto Rice Street “was the sole reason for

the stop, Officer Meyer would have activated his lights at the Rice-Cliff intersection instead of doing so over a mile down the road.” Docket 35 at 15.

Based on a review of Officer Meyer’s patrol car video and the record, Officer Meyer had reasonable suspicion to believe Navarro-Morales committed a traffic violation by coming into contact with the fog and center lines in violation of SDCL § 32-26-6. As such, Navarro-Morales’s objection to Magistrate Judge Duffy’s recommendation is overruled.

B. Officer Meyer had reasonable suspicion to believe Navarro-Morales was driving under the influence.

Magistrate Judge Duffy also concluded that “based on the totality of circumstances present,” Officer Meyer had reasonable suspicion that Navarro-Morales was driving under the influence. Docket 35 at 16. Navarro-Morales objects to this conclusion. Docket 40 at 4. Navarro-Morales argues that the four factors highlighted by Magistrate Judge Duffy do not amount to reasonable suspicion. *Id.* Upon review of Officer Meyer’s patrol car video and the record, the court agrees with the report and recommendation that Officer Meyer also had reasonable suspicion to stop Navarro-Morales for driving under the influence.

The record supports the finding that Officer Meyer stopped Navarro-Morales on the suspicion of driving under the influence of alcohol and not solely on suspicion of a violation of SDCL § 32-26-6. *See* Docket 36 at 53:3-9 (stating, “[b]asically I had reasonable suspicion to believe that the driver was impaired, after seeing him driving on the roadway.”). Officer Meyer testified that he first observed Navarro-Morales stop at a flashing yellow light, which is an

indicator of “possible intoxication.” *Id.* at 10:16. He then observed Navarro-Morales pull farther to the right than necessary during the turn onto Rice Street, causing the tires to come into contact with what Officer Meyer believed was the fog line or where a fog line would be, which was another indicator of intoxication. *Id.* at 10:22-25. Next, Officer Meyer observed Navarro-Morales “drifting in the lanes and making contact with the lane markers down Rice Street.” *Id.* at 11:2-3. Officer Meyer testified that such drifting is another “indicator of impairment.” *Id.* at 11:24. Finally, Officer Meyer testified that the vehicle was traveling at a speed lower than the posted speed limit. *Id.* at 11:4-6.

Based on observing these various traffic violations and impaired driving indicators, Officer Meyer believed he had reasonable suspicion to pull Navarro-Morales over. *Id.* at 53:3-9. Officer Meyer testified that the Visual Observation of DUI Motorists, a pamphlet created by the National Highway Traffic Safety Administration, suggests a variety of driving factors that may be indicators of possible impaired driving, including but not limited to drifting of the vehicle, improper turns, and decreased speed. *Id.* at 10-17; *see also Navarette*, 572 U.S. at 402 (calling the pamphlet the “accumulated experience of thousands of officers [suggesting] that these sorts of erratic behaviors are strongly correlated with drunk driving.”).

These same driving factors were observed by Officer Meyer in the early morning hours on July 8, 2018. Navarro-Morales stopped at a flashing yellow light, completed what appeared to Officer Meyer as an improper turn onto Rice Street, drifted over fog and center lane markers at different times while

continuing down Rice Street, and traveled at a reduced speed compared to the posted speed limit. These factors provided Officer Meyer a “ ‘particularized and objective basis’ for suspecting criminal activity at the time the stop [was] made.” *United States v. Spotts*, 275 F.3d 714, 718 (8th Cir. 2002) (quoting *United States v. Thomas*, 249 F.3d 725, 729 (8th Cir. 2001)); see also *State v. Bowers*, 915 N.W.2d 161, 165 (S.D. 2018) (holding that weaving in one’s lane of traffic provided reasonable suspicion to believe the driver may have been driving under the influence). Thus, the court concludes that under the totality of the circumstances, Officer Meyer had reasonable suspicion to believe Navarro-Morales was driving under the influence. Navarro-Morales’s objection to Magistrate Judge Duffy’s recommendation is overruled.¹

II. Booking Fingerprints

Navarro-Morales also objects to Magistrate Judge Duffy’s recommendation that the fingerprints obtained during the booking process at Minnehaha County jail were not fruit of the poisonous tree. Docket 40 at 7-9. Navarro-Morales argues that the facts are similar to *United States v. Guevara-*

¹ Magistrate Judge Duffy also found Navarro-Morales’s failure to respond to Officer Meyer’s emergency lights and sirens as the final contributing factor to the “reasonable suspicion puzzle.” Docket 35 at 15. Navarro-Morales argues that Magistrate Judge Duffy should not have considered this factor as it is a post-seizure action that cannot form the basis for the seizure. Docket 40 at 6. The Eighth Circuit in *Walker* considered the defendant’s failure to immediately pull over as a factor to justify the stop, without first discussing whether conduct occurring post-seizure can support a finding of reasonable suspicion. 555 F.3d at 720-21. Here, Officer Meyer had reasonable suspicion to stop Navarro-Morales regardless of whether this court considers the failure to respond immediately to the emergency lights and sirens.

Martinez, where the Eighth Circuit found that fingerprints obtained following an invalid arrest were fruit of the poisonous tree. 262 F.3d 751, 754-56 (8th Cir. 2001). But here, because the court has concluded that there was reasonable suspicion that Navarro-Morales was driving under the influence and had violated SDCL § 32-26-6, the traffic stop was reasonable, and Navarro-Morales was not subject to an invalid seizure. Because the traffic stop did not violate the Fourth Amendment and the statements could not be fruit of a constitutional violation, the court does not need to address this objection.

III. Statements

Lastly, Navarro-Morales objects to Magistrate Judge Duffy's recommendation that statements made during an interrogation by ICE Agent Von Haden were not fruit of the poisonous tree of his illegal seizure. Docket 40 at 9-10. Again, because the court has concluded that there was reasonable suspicion that Navarro-Morales was driving under the influence and had violated SDCL § 32-26-6, the traffic stop was reasonable. Because the traffic stop did not violate the Fourth Amendment and the statements could not be fruit of a constitutional violation, the court does not need to address this objection.

CONCLUSION

Law enforcement had reasonable suspicion to stop Navarro-Morales on the suspicion that he was driving under the influence and on the suspicion that he had committed a traffic violation by coming into contact with lane markers and crossing the center line on Rice Street. Because this stop was

justified under the Fourth Amendment, Navarro-Morales's fingerprints and statements were not fruit of a constitutional violation. Thus, it is

ORDERED that the report and recommendation (Docket 35) denying Noe Alfredo Navarro-Morales's motion to suppress is adopted as modified by this opinion.

Dated December 3, 2018.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE